

RESOLUTION 121-20

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT BETWEEN
THE BOROUGH OF CLAYTON AND ATLANTIC CITY ELECTRIC
COMPANY**

WHEREAS, the Borough of Clayton had agreed to enter into an Agreement for
CLE Tariff Light Emitting Diode Street Lighting Replacement; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the
Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve the attached Agreement
between the Borough of Clayton and the County of Gloucester.
2. That the Mayor be and is hereby authorized to execute said contract on
behalf of the Borough of Clayton.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of
Clayton held on July 9, 2020.

BOROUGH OF CLAYTON



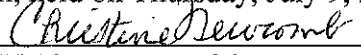
THOMAS BIANCO, Mayor

Attest: 

CHRISTINE NEWCOMB, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, July 9, 2020.



CHRISTINE NEWCOMB, Borough Clerk

CLE Tariff Light Emitting Diode Street Lighting Replacement Agreement

This CLE Tariff Light Emitting Diode Street Lighting Agreement (this "Agreement") is made and entered into as of the 9th day of July, 2020, by and between Boro of Clayton, a New Jersey municipality in Gloucester County (hereinafter called "Customer") and Atlantic City Electric Company (hereinafter called "ACE").

PREAMBLE

1. ACE is an electric utility company that provides street lighting services pursuant to its Tariff for Service, which is approved by and on file with the New Jersey Board of Public Utilities¹ ("Tariff").

2. Customer has a need for a program to reduce fossil fuel emissions in a manner that is environmentally sustainable and maximizes cost savings, reduces the total energy use and improves energy efficiency and, consequently, wishes to install and use Light Emitting Diode ("LED") street lighting on existing ACE-owned lighting fixtures on already existing poles, the location, quantities and types of which are more specifically set forth in Attachment 1 (the "Project").

3. In order to perform the work requested by Customer, Customer and ACE desire to set forth herein the charges, terms and conditions under which such requested work is to be performed.

In consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

AGREEMENT

I. INCORPORATION OF PREAMBLE

The recitals contained in the Preamble of this Agreement are hereby incorporated into, and form a part of, this Agreement between ACE and Customer.

II. ACE-SPECIFIC RIGHTS AND OBLIGATIONS

a. Procurement of LED Fixtures. After execution of this Agreement and receipt of Customer's Purchase Order (as defined in Article V), ACE will place the orders for the procurement of the LED street light fixtures (hereinafter "LED Fixture" or "LED Fixtures") in the quantities and types set forth in Attachment 1; such orders may be placed in phases over the

¹ Specifically, the Atlantic City Electric Company tariff BPU NJ No. 11 Electric Service, Section III – Rate Schedule CLE (Contributed Lighting Extension), sheets 7, 7a and 8, and Section IV – Rate Schedule CSL (Contributed Street Lighting), sheets 39, 40 and 40a, each of which may be found at the following web address: <http://www.atlanticcityelectric.com/my-business/choices-and-rates/tariffs/>, as such tariff sections may be modified or amended.

course of the Project, as ACE in its discretion determines necessary to accomplish the Work (as defined in Section III.a) and as ACE's storage capacity can reasonably accommodate.

b. Ownership, Operation, Maintenance and Service of LED Fixtures. Subject to the terms hereof, ACE will own, operate, maintain and service the LED Fixtures and all associated lighting equipment, including bracket and photo-sensitive control devices, which will be installed by ACE in accordance with its standard specifications, at Customer's expense as specified below, on existing ACE wood distribution poles or Street Light Poles, as provided in the Tariff.

c. LED Fixture Service. As part of ACE's maintenance and service, ACE will provide, at Customer's expense, as specified below, LED Fixture maintenance or replacements as may be necessary, in accordance with the Tariff; provided, however, that for LED Fixtures within the manufacturer's warranty period, ACE will be responsible for the cost of the parts under warranty, but Customer will remain responsible for ACE's labor costs (as provided in the Tariff) for such maintenance or replacements. Any non-scheduled LED Fixture service will be made within a commercially reasonable time following notification by Customer.

d. LED Fixture Removal and/or Replacement. ACE will have the right to remove and/or replace any LED Fixture within the scope of this Agreement, at Customer's expense as specified in Article III below, (i) if Customer is in default of the Agreement, (ii) if Customer requests the removal or relocation, or (iii) if for any reason and in ACE's sole judgment, (A) the LED Fixture(s) do not provide satisfactory service and performance for street lighting purposes, (B) access to such LED Fixture(s) is compromised, (C) such LED Fixtures are subject to repeated acts of vandalism other damage and/or safety is a concern, or (D) to an inordinate extent, complaints are received from the public regarding the service and performance of such LED Fixture(s). ACE will have the right to remove, replace or relocate any LED Fixture within the scope of this agreement for ACE's convenience, at ACE's expense. Prior to such removal, replacement or relocation, however, where reasonably practical and where delay in removal, replacement or relocation is not a safety issue, ACE will provide Customer with reasonable notice identifying the LED Fixture(s) to be removed, replaced or relocated and the reason therefor.

e. Modification of Specifications. ACE reserves the right to modify from time to time its specifications and/or Tariff relating to any street lighting equipment, including the LED Fixtures and their installation, in order to meet changing conditions. In addition, installations at locations subject to vandalism may be removed, at the option of ACE, unless the additional maintenance costs associated with maintenance in such locations are paid for by Customer.

f. Commencement of Installation. ACE will complete the Work in phases (each, a "Phase") and will begin the Work on the first Phase within a commercially reasonable period after the later of receipt of the LED Fixtures for such Phase from the vendor(s) or the issuance of the Purchase Order. The Work with respect to each subsequent Phase will begin after Phase Completion (as defined in Article III) for the previous Phase and within a commercially reasonable period after receipt of the LED Fixtures for such Phase. Prior to commencing Work, ACE will provide Customer with a tentative schedule for the planned Work for the entire Project and will make commercially reasonable efforts to complete the planned Work in accordance with such schedule. Within thirty (30) business days of receipt of the Purchase

Order, ACE will provide Customer with a tentative schedule for the planned Work, broken down in Phases.

III. CUSTOMER-SPECIFIC RIGHTS AND OBLIGATIONS

a. LED Fixture Installation Charges. Customer will be responsible for paying all costs associated with the initial installation of the LED Fixtures set forth in Attachment 1, as such Attachment may be modified to show changes discovered by ACE in the field as the installation progresses (the "Work"), including, but not limited to, labor, material, related overheads and taxes (including required tax gross-ups on the LED Fixtures) as charged by ACE in accordance with the Tariff. The price to be paid by Customer for the Work will be calculated in accordance with the Tariff, as set forth in Attachment 1 (the Total Price set forth in Attachment 1 is defined as the "Project Price"); provided, however, that (i) if the need for installation of additional LED Fixtures is discovered by ACE in the field as the installation progresses, the Project Price will be adjusted to ensure that Customer pays the costs associated with the installation of such additional LED Fixtures, and (ii) this Agreement covers the replacement of existing light fixtures on already existing poles and therefore, if additional LED Fixtures are requested by Customer on new poles or at different locations than the existing light fixtures, the Project Price will be adjusted to reflect additional charges for the installation of any infrastructure necessary to serve the LED Fixtures at the new locations. Any adjustments to the Project Price to reflect additional LED Fixtures and/or infrastructure related to relocated LED Fixtures as described in (i) and (ii) in the previous sentence will be billed to Customer and the additional/relocated LED Fixtures and any necessary infrastructure will be installed only after a signed change order for such charges is issued by Customer. Such change order will cover all such charges for each Phase. The total price for the Work to be completed in each Phase is defined herein as the "Phase Price" (for clarity, the total of all the Phase Prices will be equal to the Project Price) and completion of the Work for each such Phase is defined herein as "Phase Completion."

b. Customer Representative On Site. Customer will have the right to have a representative present for spot-checking of all Work performed during the installation process and the ability to make a physical record of all Work being done, so long as, and Customer hereby agrees that: (A) the method of spot-checking and making a physical record must be discussed with ACE and will be agreed-upon in advance and confirmed in a writing; (B) Customer representative will (1) keep a safe distance from the ACE crew and work-site, and (2) not interfere, in any way, with the Work or the ACE crew performing the Work; and (C) any such interference that causes a delay of, or impediment to, the Work will result in additional costs (over and above those set forth in Attachment 1) being charged to Customer. Customer also agrees that it will not communicate with the ACE crew regarding questions or concerns with respect to the installation process. All such Customer communications will be reserved for, and directed to, the ACE construction manager or designee, as specified by ACE in a communication to Customer.

c. LED Fixture Replacement Charges. Customer will be responsible for paying, as a non-refundable contribution, all costs associated with the LED Fixture replacement as specified in the Tariff, including the actual cost of the replacement LED Fixture; provided, however, that for LED Fixtures within the manufacturer's warranty period, ACE will be responsible for the

cost of the parts under warranty, but Customer will remain responsible for ACE's labor costs (as provided in the Tariff) for such replacements.

d. LED Service Restoration Charges. Customer will be responsible for paying, as a non-refundable contribution, all costs associated with ACE's provision of restoration service in the event that, prior to the termination of this Agreement, Customer requests ACE to "restore" Service to an LED Fixture after a period of no service at Customer's request.

e. LED Fixture Removal. Customer will be responsible for paying, as a non-refundable contribution, the entire cost of removal of LED Fixtures under this Agreement for any reason, whether at Customer's request or at ACE's discretion (provided, however, that removals for ACE's convenience will be at ACE's expense, as set forth in Section II.d). Termination of this Agreement does not relieve Customer from responsibility for such removal costs. There will not be any credit provided to Customer for any LED Fixture removed under this Agreement, nor will the removed LED Fixture be transferred or conveyed to Customer.

f. Rate Per Billing Month: (January through December). Customer will be responsible for paying the monthly charges as specified in the Tariff (for Customer's convenience, an estimated average monthly cost for the LED Fixtures for the total Project are set forth in Attachment 1). New rates for LED Fixtures for each Phase will be effective as soon as practicable, but in any event no longer than 60 days after the applicable Phase Completion.

g. kWh Charges. Customer will be responsible for paying kWh charges as specified in the Tariff. By law, Customer has a right to purchase electricity from suppliers other than ACE, and nothing in this Agreement is intended to interfere with that right.

h. Other Responsibilities and Charges. To the extent applicable to any customer, Customer will be subject to all applicable non-street-lighting charges, terms and conditions provided in the Tariff.

i. Traffic Control. Customer will be responsible for all costs associated with traffic control required during the installation, replacement or removal of the LED Fixtures under this Agreement.

j. Fixtures on State Highways. When the existing fixtures to be converted to LED Fixtures are on state highways: (i) ACE will be responsible for obtaining any necessary occupancy permits (*i.e.*, permits for Work to be performed on state highways) and Customer will be responsible for paying any costs related to such permits. In addition, Customer will be responsible for obtaining the written approval of the State of New Jersey for the Work to be performed on such highways; such approval from the State must specifically state that the approval is for the conversion of existing light fixtures to LED Fixtures.

k. Limitation of Liability. Customer agrees that the LED Fixtures are being installed, and the Work is being performed, under this Tariff Agreement at the sole and exclusive request of Customer. As a result, Customer and ACE agree that (i) ACE will have no liability for, and assumes no responsibility with respect to, the operational performance of the LED Fixtures; and (ii) in all other respects, Customer and ACE will be bound by any and all applicable limitations of liability provisions contained in the current Tariff consistent with, and to the fullest extent that such provisions would be applicable to the Work provided under this

Agreement if the Work hereunder were a "Service" (as defined in the Tariff) provided under such Tariff.

IV. LOCATION OF LED FIXTURES

The LED Fixtures for the Project will be installed for the Pole Numbers designated in Attachment 1, as such Attachment may be modified to show changes discovered by ACE as the installation progresses. The parties hereto understand that it is Customer's intention that the locations designated for replacement in Attachment 1 qualify as replacement situations such as to avoid the incursion of any Street Light Pole Charges; provided, however, that the placement of new (non-replacement) LED Fixtures will incur Street Light Pole Charges under the Tariff. If ACE discovers that any such locations are not consistent with Customer's intention, ACE will not install an LED Fixture at such location until, after notice to Customer, Customer instructs ACE to proceed with the Work at such location.

V. TERMS OF PAYMENT

Customer will issue a purchase order to ACE for the Project Price (which includes applicable taxes and fees (including tax gross-ups) for the installation of the LED Fixtures (the "Purchase Order"). Customer has the right to pay the entire amount of the Project Price up front, before completion of the Work for the first Phase. However, if Customer does not make such payment up front, then upon each Phase Completion, ACE will submit an invoice to Customer for the Phase Price. Payment will be due from Customer for each invoice on the due date specified in such invoice. If payment is not received from Customer by such due date, in addition to its rights in Article VI.b hereof: (i) ACE will have the right to delay the commencement or continuation of Work in any further Phases until full payment for any such unpaid invoices is received (and such delay will constitute an excusable delay for all purposes of this Agreement); and (ii) if such payment is still not received after sixty (60) days following such due date, a late payment charge of .877% per month of the unpaid balance will be assessed, in accordance with the Tariff. In addition to the Project Price (or the Phase Price for each Phase, as applicable), at the time monthly billing for the LED Fixtures installed in the first Phase under this Agreement is initiated by ACE's Billing Department, a one-time \$15.00 processing charge will be billed.

VI. AGREEMENT TERM AND RENEWAL

a. In accord with the character of the Work to be provided hereunder as well as the underlying associated uncertainties with respect to the effectiveness and longevity of LED street lighting, this Agreement will, in accordance with the Tariff, have an initial term of five (5) years, commencing on the later of (i) the date first set forth above, or (ii) the date of execution of this Agreement by the last party to sign (the "Effective Date"), unless earlier terminated in accordance with Section VI.b. After the initial term, the parties will have the option to renew in successive one (1) year terms by one party providing written notice of renewal to the other party at least sixty (60) days in advance of the expiration date of the then-current term and, after receipt of such notice, the receiving party's approval of such renewal.

b. In addition to the right of either party to terminate this Agreement upon written notice prior to the expiration of the then-current term as set forth above, ACE may terminate this

Agreement upon the occurrence of an uncured payment default by Customer and Customer may terminate this Agreement upon a failure by ACE to perform the Work as provided herein. Either party may terminate this Agreement in the event that such party determines that (i) 50% or more of the then-installed LED Fixture(s) do not provide satisfactory service for street lighting purposes, or (ii) the use of LED Fixtures under this Agreement has given rise to an inordinate extent of complaints from the public regarding said LED Fixture(s).

c. In the event that Customer terminates this Agreement before the end of the then-current term of the Agreement, Customer will be billed the total of: (i) any unpaid amount for Work completed prior to termination; and (ii) each LED Fixture's monthly LED Fixture Service Charge plus (iii) the per-kWh Distribution Charges under the Tariff applicable to each LED Fixture's Billing Month kWh, times (iv) the remaining months of the then-current term, in addition to (v) any other removal or other charges applicable hereunder, including the costs of replacing the LED Fixtures, once removed, with standard street lighting fixtures.

VII. EXCUSABLE DELAY

ACE will not be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, action or non-action (where action is required under this Agreement) of Customer, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of another party or another party's suppliers or agents, any act (or omission) by any governmental authority (including any police activity or delay in the issuance of permits), strikes, labor disputes, transportation shortages, vendor non-performance, inclement weather or electric system outages. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay.

VIII. MISCELLANEOUS

a. This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey, and any dispute arising under this Agreement shall be decided by State or Federal courts located in Atlantic County, New Jersey.

b. This Agreement constitutes the entire agreement among the parties hereto and supersedes any and all prior written or oral communications, negotiations, representations, or promises with respect to the subjects addressed in this letter agreement.

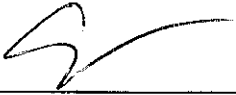
c. This Agreement may not be modified or amended in any way except by a written modification signed by all parties. None of the terms or provisions of this Agreement shall be deemed waived except by a writing signed by the party which is entitled to the benefits thereof.

d. This Agreement may not be assigned by Customer without the prior written consent of ACE, which consent shall not be unreasonably delayed or withheld.

e. This Agreement may be executed in multiple identical counterparts, which taken together will constitute an original without the necessity of all parties signing the same page or the same documents. Signatures transmitted by facsimile shall be considered original signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

CUSTOMER:



Mayor
Date: 7-9-2020

Mayor

[Title]

ATLANTIC CITY ELECTRIC COMPANY

By: Ed J. Kaminski
Edward J. Kaminski
ACE Area Manager CIPA Nerc
Date: 5/28/2020

ATTACHMENT 1**SUMMARY OF [BOROUGH OF CLAYTON] CLE LED STREET LIGHTING PROJECT**

	100W LED Cobra	150W LED Cobra	400W LED Cobra	150W LED Flood Light	250W LED Flood Light	400W LED Flood Light
16050106	33	25				
16054319	65	21				
16178618	64	4				
16296891	50					11
16296901	76			2	1	
16298924	69	3	3			
16298949	82	3				
16435019	19	36				
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Total	458	92	3	2	1	11